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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1947.

No. [redacted] 43

CENTRAL STATES COOPERATIVE, INC.,
A Corporation,
Petitioner,

vs.

WABASH MOTOR TRANSPORTATION COMPANY, INC.,
A Corporation,
Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No. 748

CENTRAL STATES COOPERATIVES, INC.,
A Corporation,

Petitioner,

vs.

WATSON BROS. TRANSPORTATION COMPANY, INC.,
A Corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

May It Please The Court:

Opinions Below.

The opinions of the Circuit Court of Appeals, for the Seventh Circuit, is reported in 165 F. 2d 392, and appears in the Record at pages 195-203.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered December 12, 1947 and became final on January

20, 1948 when that Court denied the petition for rehearing (Rec. 218). The jurisdiction of this Court is invoked by the petitioner under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The petition seeks review by this Court of the judgment entered by the Circuit Court of Appeals for the Seventh Circuit, which court reversed and remanded the judgment of the District Court with directions that the District Court remand the cause to the state court from which it was removed (Rec. 203). The judgment of the District Court awarded the plaintiff the right to possession of the property described in this record in an action based upon the forcible entry and detainer statute of the State of Illinois (Rec. 143-145). The only issue on the trial of the cause was one of the right to possession (Rec. 47).

An additional statement of the case is necessary to present the facts in support of the argument made in this brief. Certain of the facts appear in the record, and certain facts occurring after the submission of the cause on the merits in the Circuit Court of Appeals, and after the decision of that Court, must be added by affidavit, and in an exhibit attached as an appendix to this brief.

On July 14, 1947, while the appeal was pending in the Circuit Court of Appeals, the petitioner sold and conveyed the premises which are the subject matter of this suit for possession to Yellow Terminals, Inc. (Rec. 186-189; 144-145). These premises were thereafter on December 4, 1947 voluntarily surrendered by the respondent to the grantee of the petitioner. That grantee has

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been in possession of the said premises since that date (see affidavit marked "Exhibit I." in the Appendix of this Brief). This occurred after the cause had been submitted on the merits in the Circuit Court of Appeals (Rec. 194).

Thereafter, on February 4, 1948, after the decision of the Circuit Court of Appeals, the petitioner filed a complaint against the respondent in the Superior Court of Cook County, Illinois, entitled *Central States Cooperatives, Inc., a District of Columbia Corporation, Plaintiff v. Watson Bros. Transportation Company, Inc., a Nebraska Corporation, and Burl Cotton, Defendants,* Cause No. 48 S 1841, a copy of which complaint is marked "Exhibit II." and is fully set forth in the Appendix in this Brief. This is a suit by the petitioner against the respondent to recover the reasonable rental value of the premises involved in this proceeding for the period from October 1, 1946 to July 14, 1947. The petitioner also seeks to recover double the reasonable rental value by reason of an alleged wilful holding over, pursuant to the terms of an Illinois statute described in the complaint. In addition, the complaint seeks the recovery of many items of special damage enumerated in the complaint, and alleged to have occurred by reason of the wilful retention of the premises by the respondent.

SUMMARY OF ARGUMENT.

I.

This Court having granted certiorari in a case involving the identical question of law involved in this petition, any argument on the question of law seems inappropriate.

National Mutual Life Insurance Company of the District of Columbia v. *Tidewater Transfer Company, Incorporated*, Docket No. 640, October Term, 1947.

II.

The controversy between the parties to this petition is no longer substantial, nor can this Court grant the petitioner effectual relief should it grant certiorari.

Heitmuller v. *Stokes*, 256 U. S. 359, 361.

Bell v. *Bruhn*, 30 Ill. App. 300, 301.

Daggitt v. *Mensch*, 41 Ill. App. 403, 405.

Erie Railroad Co. v. *Tompkins*, 304 U. S. 64.

Helebrant v. *Sebesta*, 236 Ill. App. 461, 463.

Brown v. *Fletcher*, 237 U. S. 583.

Rorick v. *Devon Syndicate*, 307 U. S. 299, 303.

Furness, Withy & Co. v. *Yang-Tsze Ins. Assn.*, 242 U. S. 430, 431.

Mills v. *Green*, 159 U. S. 651, 653.

Gulf Col. & S. F. Ry. Co. v. *Dennis*, 224 U. S. 503, 508.

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ARGUMENT.

I.

This Court having granted certiorari in a case involving the identical question of law involved in this petition, any argument on the question of law seems inappropriate.

Before the docketing of the petition in the instant case, this Court did on March 29, 1948 grant certiorari in a case involving the identical point of law; that is the case of *National Mutual Insurance Company of the District of Columbia* v. *Tidewater Transfer Company, Incorporated,* Docket No. 640, October Term, 1947. The Court, in its order granting certiorari, certified to the Attorney General of the United States that the constitutionality of the Act of April 20, 1940, 54 Stat. 143, 28 U.S.C.A. Sec. 41 (1) is drawn in question in that case. We think that it is inappropriate to argue this point since the Court has already granted certiorari. However, we do not concede the correctness of the argument of the petitioner nor the applicability of the citations set forth in his brief in support of his petition for certiorari.

By granting certiorari in the *Tidewater* case, it is made clear to us that the Court considers the question of constitutional law raised in this proceeding, one of importance requiring settling by a decision of this Court. Although the identical question of law is raised in this petition, we do not believe for the reasons assigned under Point II of this brief that certiorari should be granted in this case. The important issue of constitutional law can be fully settled in the *Tidewater* case without granting certiorari in a doubtful case where little benefit can accrue to the petitioner.

II.

The controversy between the parties to this petition is no longer substantial, nor can this Court grant the petitioner effectual relief should it grant certiorari.

There is no longer a controversy between the parties for possession of the premises, which is the subject matter of this suit. The petitioner having sold and conveyed the said premises involved in this case, and the grantee of the petitioner having accepted the surrender of the premises by the respondent, and having taken possession of the said premises on December 4, 1948, there is no longer a controversy between the parties for the possession of the premises (Rec. 186-189) (see affidavit marked "Exhibit I." in the Appendix of this Brief).

The review in this case, therefore, is not sought to restore petitioner to possession, but is solely an effort on the part of the petitioner to secure a reversal of the judgment of the Circuit Court of Appeals in an attempt to fix liability on the supersedeas bond filed by the respondent.

This Court has held that a conveyance of premises involved in an action for possession during the pendency of an appeal on the question of right of possession, rendered the question moot.

This was the decision in *Heitmuller* v. *Stokes*, 256 U. S. 359. In that case suit was originally brought in the Municipal Court of the District of Columbia for possession of certain described premises, and the Municipal Court rendered a judgment in favor of the defendant. The judgment in the Municipal Court was reversed by the Supreme Court of the District of Columbia, which judgment was affirmed in the Circuit Court of Appeals

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for the District of Columbia, and the cause was then taken by Writ of Error to the Supreme Court of the United States.

During the pendency of this Writ of Error, the defendant in error filed a motion to dismiss the Writ of Error setting forth as grounds for the motion that the cause of action between the parties had ceased to exist by reason of the fact that after judgment of the Court of Appeals, he had sold and conveyed the real estate which was the subject matter of the suit and was therefore not entitled to the relief sought in the action, namely, the possession of the premises, and in addition, that there was no actual controversy involving real and substantial rights between the parties, and no subject matter upon which the judgment of the Court could operate. This Court agreed that since the action was brought to recover possession of real estate, and that the defendant in error had sold the real estate pending the review in the Supreme Court, the case had become moot. The Court said at page 361:

> "As the action was brought to recover the possession of real estate, and as the defendant in error has, pending review in this court, sold it, we agree with the contention that the case has become moot. The plaintiff in error, so far as the record discloses, is in possession, and the defendant in error, having sold and conveyed the property, a judgment, if in his favor, will not give him possession of the premises. It has often been held that this court will not decide moot cases."

The factual aspects in our case are stronger in favor of the respondent. The premises not only have been conveyed, but the grantee is in possession (Rec. 186-189) (see affidavit marked "Exhibit I." in the Appendix in this Brief).

The Illinois cases, however, hold to the contrary on the question of the mootness of the cause by the conveyance of title during the pendency of an appeal. In *Bell* v. *Bruhn*, 30 Ill. App. 300, the Court says, page 301:

> "After the suit was commenced the appellee conveyed the premises, so that his right to the possession had terminated *pendente lite*. He was, however, at the commencement of the suit, entitled to the possession, and his recovery inures to the benefit of his grantee."

In *Daggitt* v. *Mensch*, 41 Ill. App. 403, affirmed 141 Ill. 395, 31 N. E. 153, the Court said at page 405:

> "We have held that a conveyance *pendente lite*, by the plaintiff in an action of forcible detainer, does not affect his right to recover, if at the commencement of the suit he was entitled to the possession. *Bell* v. *Bruhn*, 30 Ill. App. 300. And the same result attends any change of possession. *Patterson* v. *Graham*, 40 Ill. App. 399."

We present the Illinois cases in our responsibility to this Court and in fairness to the petitioner. While we believe that the Illinois law would apply under the doctrine of *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, in a straight appeal to the Circuit Court of Appeals, we do not believe the same considerations apply in considering the question on a petition for certiorari. No more need be said on the considerations giving rise to the granting of the writ of certiorari than is as set forth in Rule 38 (5) of the Rules of this Court:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. * * *"

Although an important question of constitutional law arises in this case, that question can be fully settled in the case of *National Mutual Insurance Company of the*

District of Columbia v. *Tidewater Transfer Company, Incorporated*, Docket No. 640, where certiorari has already been granted.

We feel that the factual status of this record presents a case where certiorari should be denied. There are factors in our case in addition to the question of the mere conveyance of the property. The premises have been sold and the grantee of the petitioner placed in possession. The petitioner itself has filed an action against this respondent to recover for the reasonable rental value of the premises, for all items of damage alleged to have been sustained by the retention of the premises by the respondent, and for double the reasonable rental value of the premises. In a suit upon the supersedeas bond, double rent could not be recovered.

In the case of *Helebrant* v. *Sebesta*, 236 Ill. App. 461, 463 (1st Dist., 1925), the Court said:

> "It is, of course, elementary that the obligation of a surety on a bond is strictly construed in favor of the surety (*City of Sterling* v. *Wolf*, 163 Ill. 467) and applying this rule to the plain words of condition of the bond, it is difficult to conceive of any theory on which the defendant Pelikan could be liable for this statutory penalty.
>
> "The plaintiffs suggest that the surety might be liable under the clause which says, 'and also all damages and loss which plaintiffs have sustained or may sustain by reason of the withholding of the premises in controversy', but we are unable to see how such a construction of this clause can be sustained, for the obvious reason that 'damages' and 'loss' refer to actual loss and actual damages, while the provision of section 2 is for a penalty, it having been held that this statute is highly penal in its nature. *Loeb* v. *Alexander*, 174 Ill. App. 143.

"Moreover, we think that the precise question has been decided by the Supreme Court of this State in *Alexander* v. *Loeb*, 230 Ill. 454. That was a suit brought to recover this statutory penalty. There had been a previous suit brought on the appeal bond, and the defendant argued that the matter was *res judicata* by reason of that suit.

"The Supreme Court said: 'Under the conditions of the appeal bond, appellees could not have recovered in that case for double rent or for $20 per day liquidated damages.'"

It is clear, therefore, that the suit by the plaintiff in the Superior Court of Cook County, Illinois, is necessary if the plaintiff is to have a trial on the issues as to whether or not it is entitled to double rent pursuant to the Illinois Statutes. The determination therefore of the liability on the supersedeas bond still leaves the plaintiff where it must have an independent action if it is to secure double rent.

It is obvious therefore that the only purpose of the petition for certiorari is an effort on the part of the petitioner to secure a reversal of the judgment, a hearing on the merits in the Circuit Court of Appeals, and an affirmance of the judgment of the District Court so that a suit for damages may be predicated on the supersedeas bond.

Assuming *arguendo*, that this cause has not become moot, we have nevertheless a situation where this court cannot give the petitioner any effectual relief. It cannot put the petitioner in possession of the premises. It cannot determine the amount of liability on the supersedeas bond. At best this Court would only reverse the decision of the Circuit Court of Appeals on the ground that it erred in holding the statute involved unconstitutional and remand the cause to that Court with directions to pro-

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ceed to a determination on the merits. *Brown* v. *Fletcher*, 237 U. S. 583.

This review is confined to the questions that are urged in the petition for certiorari, and is limited by the petition to the question of the constitutionality of the Act of April 20, 1940, 54 Stat. 143, 28 U.S.C.A. Sec. 41 (1) extending the jurisdiction of District Courts. *Rorick* v. *Devon Syndicate*, 307 U. S. 299, 303.

The Circuit Court of Appeals did not pass on the merits of the cause. It held that the District Court lacked jurisdiction to hear the cause in the first instance, and reversed and remanded the cause to the District Court with directions to remand the cause to the state court from which it came (Rec. 195-203).

The situation as it then exists would require the petitioner, if it were successful in this Court and in the Circuit Court of Appeals, on the hearing of the merits, to nevertheless go back to a new suit on the bond upon the issue of reasonable rental value and damages.

Because of this state of the record, we felt that it became our duty to this Court to disclose the additional facts in this brief in accordance with the decision in *Furness, Withy & Co.* v. *Yang-Tsze Ins. Assn.*, 242 U. S. 430, 431, so that the facts essential to an "adequate appreciation" of the situation is brought to the attention of the Court. In that case, the Court said at page 431:

> "The writ of certiorari was improvidently granted and must be dismissed. We should have denied the petition therefor if the facts essential to an adequate appreciation to the situation had been brought to our attention. Petitions of this character are at the risk of the party making them, and whenever in the progress of the cause facts develop which if dis-

> closed on the application would have induced a refusal, the court may upon motion by a party or *ex mero motu* dismiss the writ. *United States* v. *Rimer*, 220 U. S. 547; *State* v. *Water Commissioners*, 1 Vroom (30 N.J.L.) 247."

It is a situation, where this Court cannot grant it effectual relief. If the petition for certiorari is denied, the decision of the Circuit Court of Appeals remains in effect. That decision requires that the cause be remanded to the state court. There will be no judgment in favor of either of the parties to this proceeding and hence no prejudice to either of the parties. While the cause may not be strictly a moot cause, we do believe it is encompassed in the same category. This court has repeatedly held that it will not decide a controversy, the determination of which would serve no beneficial purpose to any of the parties. In the case of *Mills* v. *Green*, 159 U. S. 651, 653, the Court said:

> "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

In *Gulf, Col. & S. F. Ry. Co.* v. *Dennis*, 224 U. S. 503, 508, the Court said:

> "Almost from the beginning it has been the settled rule in this court that when, pending a writ of error to a lower Federal court, and without the fault of the defendant in error, an event occurs which renders it impossible, if the case was decided in favor of the plaintiff in error, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the writ."

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The denial of the petition will put the parties in an equal position. All of the issues as to damages, reasonable rental value, right to double rent, will be determined in the action presently pending in the Superior Court of Cook County, Illinois.

CONCLUSION.

While an important question of constitutional law is involved in this petition, it can be settled by the Court in the cause in which it has already granted certiorari. The facts developed in this matter, we believe, should induce a refusal on the part of this Court to grant certiorari in this case.

Respectfully submitted,

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Chicago 4, Illinois.

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APPENDIX.

EXHIBIT I.

In The

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1947.

No. 748

Central States Cooperatives, Inc., a Corporation,
Petitioner,

v.

Watson Bros. Transportation Company Inc.,
a Corporation,
Respondent.

AFFIDAVIT.

Burl Cotton, being first duly sworn on his oath, deposes and says:

1. That he is the Chicago Manager of Watson Bros. Transportation Company, Inc., respondent herein;

2. That on December 4, 1947 the respondent surrendered possession of the premises described in this proceeding, the subject matter of this proceeding in forcible entry and detainer, to Mr. E. W. Wright, Terminal Manager of Yellow Terminals, Inc., and Yellow Terminals, Inc. took possession of the said premises on said date; and Yellow Terminals, Inc., is still in possession of the said premises.

.....

Burl Cotton

Subscribed and sworn to before me this 5th day of May, 1948.

.....

Notary Public.

EXHIBIT II.

State of Illinois,
County of Cook—ss.

In the Superior Court of Cook County

Central States Cooperatives, Inc., a District of Columbia corporation, Plaintiff, v. Watson Bros. Transportation Company, Inc., a Nebraska corporation, and Burl Cotton, Defendants.	Complaint at Law No. 48s 1841

COMPLAINT.

Now comes the plaintiff, Central States Cooperatives, Inc., a corporation organized under the laws of the United States in the District of Columbia, by Thomas G. McBride, its attorney, and for a cause of action alleges as follows:

(1) That the plaintiff is a corporation organized, incorporated and existing under and by virtue of the laws of the United States in the District of Columbia and is a citizen of the District of Columbia, duly licensed to do business in the State of Illinois.

(2) That the defendant, Watson Bros. Transportation Company, Inc., is a corporation organized, incorporated and existing under and by virtue of the laws of the State of Nebraska; that the defendant, Burl Cotton, is a resident and citizen of the State of Illinois.

(3) That Central States Cooperatives, Inc., plaintiff, was from the 25th day of June, 1946 until the 14th day

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of July, 1947 the owner of the legal title in fee simple in and to the real estate and premises situated in the City of Chicago, County of Cook and State of Illinois, described as follows, to-wit:

That part of the North Half (N½) of the Northwest Quarter (NW¼) of Section Thirty-two (32), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Principal Meridian, more particularly described as follows: Beginning at a point which is intersection of center line of vacated Iron Street, as it exists South of vacated West 33rd Street, which is Fifty (50) feet wide, extended Northwesterly with North line of vacated West 33rd Street; thence Northeasterly at right angles to said center line extended Two Hundred Seventy-four (274) feet more or less to Westerly dock line of South fork of South branch of Chicago River, as occupied; thence North Forty-one (41) degrees, thirty (30) minutes, thirty (30) seconds West, One hundred sixty six (166) feet Eight and one-eighth (8-1/8) inches; thence North Thirty-two (32) degrees, Forty-seven (47) minutes West, Sixty-three (63) feet Four and one-half (4½) inches; thence North Twenty-nine (29) degrees, Forty-six (46) minutes, Twenty (20) seconds West, One Hundred Twenty (120) feet, Eleven and one-half (11½) inches more or less along said dock line as occupied to line formed by the extension East of South line of Lot Eight (8) of Shepard and Decreet's Subdivision of Lots Twenty-one (21), Twenty-two (22) and Twenty-three (23) in Alice Lynch's Subdivision of the Northwest quarter (NW¼) of Section Thirty-two (32), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Principal Meridian; thence West along said South line extended Two Hundred Eighty-eight (288) feet Nine and five-eighths (9-5/8) inches more or less to intersection of said line with center line of vacated Iron Street, as exists South of West 33rd Street extended Northwesterly in a straight line; thence Southeasterly along said center line of va-

cated Iron Street (as exists South of vacated West 33rd Street extended Northwesterly Four Hundred Ninety-eight (498) feet and Nine (9) inches to place of beginning, containing One Hundred Six Thousand One Hundred Fifty-five (106,155) square feet, more or less;

having derived title to the said premises by warranty deed from Charles H. Morse, Jr. and Vesta C. Morse, his wife, dated and duly acknowledged on June 25, 1946 and recorded in the Recorder's Office of Cook County, Illinois on July 8, 1946 as Docmuent No. 13838043.

(4) That upon taking title to the said premises, the same was subject to an indenture otherwise known as a lease, dated July 31, 1945 by and between Charles H. Morse, Jr. as lessor and Watson Bros. Transportation Co., Inc., a Nebraska corporation, as lessee, defendant herein, whereby the said lessor demised and leased to the said lessee the above described premises, excepting therefrom a tract of land bounded by a line described as follows:

Beginning at the point of beginning of the tract of land hereinabove described; thence, Northeasterly on the Southerly line thereof Forty-nine (49) feet Ten and one half (10½) inches to the East line of vacated Iron Street North of vacated West 33rd Street; thence Northwesterly along the said Easterly line of vacated Iron Street Three Hundred (300) feet, Seven eighths (7/8) inches more or less to the intersection of said East line with the Westerly line of the tract of land hereinabove descirbed; thence Southeasterly along said Westerly line of said tract of land to the place of beginning; containing Seven Thousand Three Hundred Seventy-nine (7/379) square feet, more or less;

which said lease made the further reservation:

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Reserving unto Lessor and his assigns the right to use as a roadway the westerly thirty (30) feet of the demised premises running parallel to the West line of said premises and extending the entire length thereof;

for and during the term of one year commencing October 1, 1945 and ending September 30, 1946, to be occupied and used by said lessee for the purpose of receiving, loading, or unloading, transferring, shipping, dispatching, or similarly dealing with freight carried by motor trucks and motor vehicles, and as a garage and repair shop, and for all related purposes.

(5) That the lease provided, among other things as follows:

"That the lessor may at any time, upon at least ninety (90) days' written notice to the lessee of his intention so to do, cancel and terminate this lease in the event of a bona fide sale by lessor of the premises.

"In the event, during the term of this lease, or the extentions referred to in paragraph 18 hereof, lessor shall elect to sell the demised premises, then lessee shall have the right of first refusal, that is to say, the first opportunity to purchase the premises upon the same terms and conditions, and for the same conditions as lessor then proposes to sell the premises to any other individual, firm or corporation. In the event of any proposed sale, lessor shall advise lessee in writing of the name of the proposed purchaser, the terms and conditions of the proposed sale, and the consideration therefor, and lessee shall have ten (10) days from the receipt of such notice within which to notify lessor of its election to purchase the demised premises upon the like terms and conditions and for like consideration. In the event lessee shall not deliver to lessor, within said ten day period, a notice of its election to so purchase the premises, then lessor shall be free to sell the premises to the person named in and on the

same terms and conditions set forth in the notice first above mentioned, and this lease shall then be subject to termination by lessor in the manner first above mentioned."

(6) That Charles H. Morse, Jr., the said lessor, did elect on May 27, 1946 to sell the demised premises to the Central States Cooperatives, Inc., plaintiff herein, for the sum of One Hundred Thousand ($100,000.00) Dollars cash and on May 28, 1946 gave notice in writing to the defendant as lessee of such intention and of all of the terms and conditions of such proposed sale, and gave to the said lessee the right of first refusal and the first opportunity to purchase the premises upon the same terms and conditions; that the defendant as lessee did not within ten days of the receipt of such notice, or at any other time, notify said Charles H. Morse, Jr., as lessor of any election to purchase the premises upon like terms and conditions and for like consideration, or otherwise; that thereby the said Charles H. Morse, Jr., as lessor, was free to sell the said premises and to sell the premises to Central States Cooperatives, Inc., plaintiff herein, upon the terms and conditions set forth in the above mentioned notice.

(7) That on June 10, 1946 after the expiration of the ten-day period of the said lessor's right of first refusal, Charles H. Morse, Jr., the lessor, gave written notice to the defendant as lessee of his intention to terminate and to cancel and terminate the said lease effective September 30, 1946, more than ninety days from the date of said notice of termination, a copy of which notice is attached hereto, marked Exhibit "A", and made a part hereof.

(8) That the said lease also provided, among other things, as follows:

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"Lessee shall have the option of renewing this lease for a period of one year following the expiration of the term hereof, which option shall be exercisable by lessee by giving notice in writing to lessor by registered mail at least sixty days prior to the expiration of said term."

(9) That the said defendant, Watson Bros. Transportation Co., Inc., as lessee did not exercise such option of renewing the said lease by giving notice in writing to the lessor by registered mail, at least sixty days prior to the expiration of the said term, or in any other manner.

(10) That by reason of the above facts the lease of the defendant, Watson Bros. Transportation Company, Inc., in and to the above described premises expired on September 30, 1946.

(11) That the plaintiff herein did on the 29th day of July, 1946 demand of the defendant, Watson Bros. Transportation Company, Inc., that the said defendant surrender possession of the said premises to the plaintiff on October 1, 1946, a copy of which is attached hereto, marked Exhibit B and made a part hereof.

(12) That the defendant, Burl Cotton, during the period from June 25, 1946, when the plaintiff purchased the said property, to September 30, 1946, when the lease of the defendant, Watson Bros. Transportation Company, Inc., expired, was engaged in conducting the business of the defendant, Watson Bros. Transportation Company, Inc., as a servant, employe and agent of Watson Bros. Transportation Co., Inc., defendant.

(13) That upon the expiration of said lease on September 30, 1946, the defendants and each of them failed to vacate the said premises but wilfully, wrongfully, unlaw-

fully, and knowingly, and without any claim of right, forcibly retained and held possession of the premises above described and all parts thereof; that the defendants and each of them wilfully, wrongfully, unlawfully and knowingly, and without any claim of right, forcibly refused to admit the plaintiff to possession of the said premises, or any part thereof; that the defendants and each of them did continuously from October 1, 1946 to July 14, 1947 wilfully, wrongfully, unlawfully, and knowingly, and without any claim of right, withhold possession of the above mentioned premises and all parts thereof from the plaintiff herein.

(14) That the defendants and each of them, by reason of the wilful, wrongful, unlawful and knowing withholding of possession of the premises above described from the plaintiff herein, were and are trespassers upon the said premises from October 1, 1946 and during all the time thereafter the plaintiff owned said premises, until July 14, 1947.

(15) That the defendants are liable to the plaintiff for the use and occupancy of the above described premises from October 1, 1946 to July 14, 1947; that the reasonable rental value of the said premises so occupied by defendant during the period from October 1, 1946 to July 14, 1947 is the sum of Twenty Two Thousand Four Hundred Sixteen Dollars ($22,416.00) per year, or the sum of Eighteen Hundred Sixty-eight Dollars ($1868.00) per month; that the defendants, by reason of their wilful, wrongful, unlawful, and knowing holding over of possession of the said premises from the plaintiff herein from October 1, 1946 to July 14, 1947, are liable to the plaintiff at double the yearly value of the said lands, tenements, and hereditaments so detained for the period from October 1, 1946 to July 14, 1947 according to the statute

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of the State of Illinois in such case made and provided, Ill. Rev. Stat. 1947, Ch. 80, Par. 2, L. 1943, Vol. 1, p. 848, amounting to $35,367.28.

(16) That the defendants have failed and refused and continue to fail and refuse to pay the said sums or any part thereof to the plaintiff herein and has withheld the payment to the plaintiff of such moneys by an unreasonable and vexatious delay, by reason whereof the plaintiff is entitled to recover interest at the rate of 5% per annum upon such sums from the time they respectively became due.

(17) That as a direct and proximate result of the defendants' wilful, wrongful, unlawful and knowing withholding of the possession of the premises from the plaintiff herein, plaintiff suffered other and further damages, to-wit:

(a) The cost of moving stock, furniture, inventory, and other personal property from 1339 West 41st Street, Chicago and 1535 South Peoria Street, Chicago, on or about the 4th day of December, 1946, in the sum of Thirty-Seven Hundred Fifty-five and 86/100 Dollars ($3,755.86).

(b) The damage actually incurred as is usually customary and unavoidably incurred in moving perishable and semi-perishable goods, groceries, and other merchandise, to-wit: the sum of Eleven Hundred Twenty and 07/100 Dollars ($1120.07).

(c) That in order to operate the business of the plaintiff at 1336 Fullerton Avenue, Chicago, it was necessary to expend various sums of money for labor and materials in the installation of office partitions, refrigerating equipment, compressor, blowers, shelving, and electrical installation, which cannot be recovered, realized or salvaged, in the amount of Twenty-five Hundred Thirty-eight and 05/100 Dollars ($2538.05).

(d) Because of the unsuitability of available premises, plaintiff was required to operate its business from two locations from October 1, 1946 to December 1, 1946, requiring the plaintiff to expend moneys for the employment of two men in October and November, 1946 more than would have been required had the plaintiff been permitted to use the property referred to in paragraph 3 of this complaint, to-wit: the sum of Six Hundred Eighty-one and 60/100 Dollars ($681.60), and in addition thereto plaintiff was required to pay on account of said employment unemployment tax, Social Security tax, and workmen's compensation insurance.

(e) Because of the unsuitability of available premises at 1336 Fullerton Avenue, plaintiff was required to hire two additional men to handle the merchandise of the plaintiff in the operation of the plaintiff's business from December 4, 1936 to the present time at a weekly salary for each of Forty-two and 60/100 Dollars ($42.60), and in addition thereto plaintiff was required to pay on account of such employment, unemployment tax, Social Security tax, and workmen's compensation insurance.

(f) Because of the unsuitability of available premises, plaintiff was required to rent trucks to unload merchandise shipped to plaintiff by railway car at the rate of ten ars per month at a cost of Two Hundred Dollars ($200.00) per month from December 4, 1946 to the present time.

(g) Because of the inability of the plaintiff to get occupancy of 3201 Iron Street during the period of October and November, 1946 and not being able to get other premises in which to store heavy Fall shipments of merchandise, it was necessary to store large volumes of such merchandise in storage warehouses and to pay cartage

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expenses from the warehouse to the plaintiff's place of business, at a cost of Twenty-nine Hundred Fifty-three and 51/100 Dollars ($2953.51).

(h) On November 26, 1946 plaintiff was obliged to give up possession of its premises commonly known as 1339 West 51st Street and 1535 South Peoria Street, Chicago, Illinois, and to move to 1336 Fullerton Avenue, Chicago, Illinois; that for two weeks, from November 26, 1946 to December 10, 1946, their business was completely stopped, and for a period from December 10, 1946 to January 10, 1947 plaintiff's volume of business was impaired, with a loss of profits that would have accrued to them of Seventy-five Hundred Dollars ($7500.00).

To the damage of the plaintiff on One Hundred Thousand Dollars ($100,000.00), for which sum it prays judgment against the defendants and each of them.

Central States Cooperatives, Inc.,
By Thomas G. McBride, its attorney,
100 North La Salle Street
Randolph 4477.

State of Illinois,
County of Cook—ss.

Thomas G. McBride, being first duly sworn on oath deposes and says that he is the attorney for the plaintiff in the above entitled cause; that he has read the above and foregoing complaint by him prepared on behalf of the plaintiff, knows the contents thereof and that the same are true in substance and in fact.

_____

Subscribed and sworn to before me this ..... day of ..... A. D. 1948.

_____

Notary Public

EXHIBIT A.

Law Offices
Gallagher, Rinaker, Wilkinson & Hall
231 South La Salle Street
Chicago 4

June 10, 1946

Watson Bros. Transportation Co., Inc.
802 South 14th Street
Omaha, Nebraska

Attention Mr. Fay Watson, President.

Gentlemen:

As attorneys for Mr. Charles W. Morse, Jr. we wrote to you on May 25, 1946 giving notice of a written contract made and entered May 27, 1946 between Mr. Morse, as Seller, and Central States Cooperatives, Inc. as Buyer, for the sale of the motor truck terminal property in Chicago, Illinois, which your company now occupies as a tenant under lease dated July 31, 1945.

Paragraph 2 of the lease dated July 31, 1945, provides in part as follows:

> "The Lessor may at any time upon ninety days' written notice to Lessee of his intention so to do, cancel and terminate this lease in the event of a bona fide sale by Lessor of the premises."

Inasmuch as your company failed to exercise its option to purchase the premises, as provided in paragraph 2 of the lease, Mr. Morse has instructed us on his behalf to notify you and we do hereby notify you of his election, pursuant to the rights reserved in him under paragraph 2 of the lease, to cancel and terminate said lease effective September 30, 1946. Accordingly, said lease is hereby cancelled and terminated effective as of said date.

Very truly yours,
Gallagher, Rinaker, Wilkinson & Hall
By: (Sgd.) Samuel W. Witwer, Jr.

SWW:KG

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EXHIBIT B.

Law Offices
Brenner & McBride
100 N. La Salle St.
Chicago 2

July 29, 1946

Watson Bros. Transportation Co., Inc.
802 S. 14th Street,
Omaha, Nebraska.

Gentlemen:

On June 29th, following my letter of June 25th, I had a telephone conversation with Mr. Wolf, relative to the possible making of a lease from Central States Cooperatives, Inc. to your Company for the dock space on the property at 3201 South Iron Street, Chicago. At the conclusion of this conversation, Mr. Wolf stated that he would talk to Mr. Watson and would let me know in a few days what they wanted to do. Thirty days have elapsed from this time without any communication from you by letter or otherwise. Central States Cooperatives has naturally assumed that you are not interested in remaining in the premises after September 30, 1946.

This being the case we are in the course of making a lease with other prospective tenants for the occupancy of the dock space, beginning October 1, 1946. Since your present lease terminates September 30th we will expect you to vacate the premises on that date in order that Central States Cooperatives, Inc. may take possession of the same on October 1, 1946 and in order that the tenant of Central States Cooperatives may occupy the dock space on said property beginning October 1, 1946.

This letter is written for the purpose of avoiding any possible misunderstanding with regard to the above premises.

Yours very truly,
(Sgd.) Thomas G. McBride

TGM:D